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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., ET AL.,
Appellants,

vs.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

STATEMENT AS TO JURISDICTION

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., EMIL MAZEY, IN HIS OWN BEHALF AND IN BEHALF OF 1776 EMPLOYEES OF THE CHRYSLER CORPORATION; NORMAN MATTHEWS, ARTHUR GRUDZEN, ALEX BARBOER, WILSON KUCK, RALPH FILECCIA, ALFRED S. MARCANGELO, RICHARD T. LEONARD, LEONARD McPHERSON, FREDERICK JOHNSTON, WALTER ROOD, WILLIAM T. ARCHER, MICHAEL LACEY, HARRY SOUTHWELL, AND BLAINE MARRIN,

Appellants,

vs.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN

No. 44,212

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, the appellants submit herewith their statement showing the basis of the

jurisdiction of the Supreme Court of the United States to entertain an appeal in this case. The date of the judgment entered by the Supreme Court of Michigan is June 29, 1949.

Jurisdiction

The statutory jurisdiction of the Supreme Court of the United States to review the judgment in this case by direct appeal is conferred by Sec. 1257 (2) of Title 28, U.S.C. The following cases are believed to sustain the jurisdiction of the Supreme Court:

La Crosse Telephone Corp. v. *Wisconsin Employment Relations Board*, 336 U.S. 18;

Bethlehem Steel Co. v. *New York State Labor Relations Board*, 330 U.S. 767;

Hill v. *Florida*, 325 U.S. 538;

Hines v. *Davidowitz*, 312 U.S. 52;

International Union, U.A.W.A., A.F. of L., Local 232, et al. v. *Wisconsin Employment Relations Board, et al., 336 U.S. 245;*

Thornhill v. *Alabama*, 310 U.S. 88;

Pollock v. *Williams*, 322 U.S. 4;

Thomas v. *Collins*, 323 U.S. 516.

State Statute Involved

The statute of the State of Michigan which was held to be valid by the highest court of the State, but which the appellants contend is unconstitutional and invalid, is Act No. 318, Public Acts of Michigan, 1947 (Act No. 176, Public Acts 1939, as amended; Michigan Statutes Annotated, 1947, Cum. Supp., Secs. 17.454 (1) *et seq.*), particularly Secs. 9, 9a, 9b, 9c and 22 which sections are set forth in Appendix "A" attached hereto.

The Issues and the Rulings Below

The amended complaint (R. 49) was filed in the Circuit Court of Wayne County, Michigan, on May 29, 1948, by

the International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O. (hereinafter referred to as the UAW-CIO), the Acting President of the Union appearing in his own behalf and in behalf of 1776 members of the Union employed by the Chrysler Corporation, and certain other officers and members of the UAW-CIO. The defendants were James N. McNally, the Wayne County Prosecuting Attorney and Eugene F. Black, the Michigan Attorney General.[1] The essential allegations of the amended complaint are summarized in the following paragraphs.

Some 65,000 members of the UAW-CIO are employed by the Chrysler Corporation in its Michigan plants, and in plants of the corporation in Indiana and California (R. 49, 52-53); in which automotive products are produced for commerce, as defined by the Labor-Management Relations Act, 1947 (61 Stat. 136; 29 U.S.C. Secs. 141-197) (R. 52). The UAW-CIO, the certified (by the National Labor Relations Board) collective bargaining representative of all production and maintenance employees (Ex. 4, R. 108), has a collective bargaining agreement with the Corporation (R. 53). In 1948 a wage dispute existed between the plaintiffs and the corporation (R. 51). The plaintiffs, having fully complied with the notice, bargaining and mediation requirements of Section 8(d) of the Federal Labor Management Relations Act, decided to strike in support of its wage demands (R. 53). The strike was called and put into effect pursuant to the "urging and instigation" of the plaintiffs (R. 52).

Secs. 9, 9a, 9b and 9e of Act 318, Public Acts of Michigan

[1] Gerald K. O'Brien succeeded James N. McNally as Prosecuting Attorney of Wayne County, and Stephen J. Roth succeeded Eugene F. Black as Attorney General of Michigan in January, 1949 prior to the consideration of the cause in the Supreme Court of Michigan. A formal order of substitution was entered by the Michigan Supreme Court on September 21, 1949.

1947, commonly known as the Bonine-Tripp Act, provide that "no strike or lockout shall take place or be put into effect" until specified "steps" and "requirements" are complied with:

(a) If the parties cannot settle their dispute, "the employees or their representative, in the case of impending strike" must notify the State Mediation Board of the issues involved "not less than ten days before the strike . . . is to become effective . . ." Sec. 9(1). Mediation is then to proceed.

(b) If it becomes apparent to the State Board, or if the Board is notified by either party that no further efforts at settlement are likely to be effective, the Board is to conduct an election within ten days. The expenses of such election are to be defrayed by the parties to the dispute. Sec. 9a.

(c) "Every employee in the bargaining unit"—the State Board is required by Sec. 9e to "determine" the "bargaining unit"—"shall be entitled to vote in such election and in order to authorize a strike under the provisions of this act, a majority of all employees in such bargaining unit must vote in favor of such action." Sec. 9a.[2]

(d) Sec. 9 b provides that "it shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of

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[2] The provisions with respect to the expenses of the election and the composition of the majority who must approve the strike were changed by amendments to the Michigan Act in 1949 (Act. No. 230 Public Acts of 1949). The state now bears the expenses of the election. The 1949 amendments also change the definition of the majority who must approve the strike. The statute now requires that a "majority of all employees casting valid ballots" must vote in favor of strike action. However, under Michigan law the change in the statute does not release plaintiffs from liability for the penalties incurred by their action under the earlier statute. The earlier statute is "treated as still remaining in force" for the purpose of prosecution for any violations committed while it was in effect. Mich. Stats. Ann., Ch. 5, Sec. 2.214.

the business during the entire period in which the respective steps required by Section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a."

Section 22 makes violations of the act criminal offenses. It provides that "any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect. . .without first having served notice as required in section 9 of this act, . . . or while an election is pending under said section 9, . . ." shall be punished by fine up to $1,000.00 or imprisoned for not more than six months, or by both.

The complaint further alleges that the State Board demanded that the plaintiffs and members of the Union who were employees of the Chrysler Corporation submit to an election, that a strike was called "while said election was pending" within the meaning of the Act (R. 52), and that defendants threatened to prosecute all persons instigating or causing a strike, prior to authorization by an election (R. 53-54).

The complaint further alleges that sections 9, 9a and 22, as threatened to be applied to the plaintiffs, are unconstitutional and void upon the following two principal grounds:

(1) The prohibition of any strike until a majority of the entire collective bargaining unit has voted its approval conflicts with the provisions of the Federal Labor Management Relations Act, 1947 and Article I, Section 8, Clause 3 of the Federal Constitution (R. 55; see also R. 18).

(2) The prohibition of any strike until a majority of the entire collective bargaining unit has voted its approval deprives the plaintiffs of due process of law under the Fourteenth Amendment of the Federal Constitution in that it constitutes an unreasonable infringement upon their rights

of freedom of association, of speech and of collective bargaining and their liberty of contract (R. 54-55).

Plaintiffs asked for a determination that the strike vote requirements of Sections 9, 9a and 9b (R. 57) were invalid and, to prevent irreparable injury, prayed for an injunction to enjoin prosecution (R. 56-57).

A motion to dismiss (R. 62) for lack of jurisdiction was denied by the Circuit Court (R. 65); a copy of the court's opinion is attached hereto. A temporary injunction was granted against the defendants continuing the terms of a restraining order theretofore issued (R. 67).

The answers of the defendants (R. 69, 76) were, in general, denials of information sufficient to form a belief as to most of the allegations of the complaint. The defendant Prosecuting Attorney admitted "he will prosecute all persons who in said county violate the penal provisions of Act No. 318 of the Michigan Public Acts, 1947" (R. 78). The defendant Attorney General admitted that he and the Prosecuting Attorney "have threatened to enforce the penal provisions of the statutes and laws of this State against violators of said statutes and laws" (R. 73) and that "if said plaintiffs or others violate the laws of the State of Michigan they will be subjected to prosecution" (R. 74-75).

Both defendants denied the allegations as to unconstitutionality (R. 73, 74, 78).

The case was tried to the Circuit Court without a jury on July 15, 1948 (R. 1-48). Evidence was presented concerning the wage issues in the strike (R. 9), the compliance by plaintiffs with the requirements of the Union's constitution in calling the strike (R. 14-15, 19-20), and the adverse effect upon the right to strike and upon collective bargaining of requiring a prior strike vote in which approval must be obtained of the majority of all employees in the unit, including those who are not members of the Union (R. 3).

It was shown that the UAW-CIO was the recognized representative of the employees of the Chrysler Corporation (R. 16), that the collective agreement covered plants in Indiana and California as well as in Michigan (R. 17; see also Ex. 4, R. 108), that the company's activities affected interstate commerce (R. 2, 17), and that plaintiffs complied with the notice, bargaining and mediation requirements of Section 8(d) of the Labor Management Relations Act, 1947 (R. 27).

On August 3, 1938 Circuit Judge Theodore J. Richter filed his opinion (R. 86), and on August 11, 1948 the decree for plaintiffs was filed (R. 92). The Circuit Judge held that the limitations imposed by the Michigan statute upon the right to strike and to counsel a strike were unconstitutional invasions of rights protected by the due process clauses of the State and Federal Constitutions (R. 90). The Circuit Judge held also that collective bargaining rights and procedures of the Federal Labor Management Relations Law were impaired by the state act (R. 91). The Court, therefore, enjoined the prosecution of the plaintiffs for failing to comply with the requirements of the Act (R. 91-94). A copy of the Court's opinion is attached.

Defendants appealed. The Michigan Supreme Court, on June 29, 1949, reversed and dismissed the bill of complaint. The Michigan Supreme Court considered all questions raised under the Federal Constitution and laws and decided them adversely to the plaintiffs. The opinion of the Michigan Supreme Court, a copy of which is appended hereto, held that it was not "an unreasonable exercise of the state's police power to forbid resort to a strike which is not approved by a majority of the employees involved. . ." The Court held that the application of the challenged provisions of the statute to the plaintiffs would not deny them any protected freedom of speech or due process of law either under the State or Federal Constitutions. The Court,

relying largely upon the decision of this Court in *International Union, U.A.W.A., A. F. of L., et al. v. Wisconsin Employment Relations Board, et al.*, 336 U. S. 245, held further that there was no conflict between the provisions of the Michigan Act and the Federal Labor Management Relations Act, and no conflict with the Commerce Clause. The Court recognized that the strike involved plants in Indiana and California and that "some employees of the Chrysler Corporation who would be classed in the same bargaining unit are employed by the corporation in Indiana and some in California", but it held that these facts could not affect the power of Michigan "incident to a strike which is located in this state."

The Federal Questions Presented Are Substantial

This appeal presents two federal questions, each of which is substantial:

I. Whether the provisions of the Michigan statute prohibiting the calling of a strike for higher wages in an industry affecting interstate commerce unless and until the majority of all employees in the collective bargaining unit have so voted in a state-conducted election, conflict with the provisions of the Labor Management Relations Act, 1947.

II. Whether the State of Michigan may, consistent with the due process requirements of the Federal Constitution, restrict the freedom of speech and of assembly and of collective bargaining and the right of employees to quit work in concert, by prohibiting, under criminal penalties, workers and their union representatives from "instigating" or "calling" or "causing" a strike to secure higher wages unless they first secure the approval of a majority of all workers in the bargaining unit, including those who do not vote and those who are not even associated with them in their Union.

The Michigan Statute Invades the Field of Labor Relations in Industries Affecting Commerce Which Congress Has Occupied and Its Provisions Conflict With the Labor Management Relations Act, 1947

(1) In enacting the Labor Management Relations Act, 1947, Congress passed comprehensive legislation regulating labor relations in industries affecting interstate commerce. In Section 1(b) Congress indicated its broad purposes

> "to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

Succeeding sections of the Act and its legislative history show that after an extensive inquiry into the entire field of labor relations Congress formulated a comprehensive regulatory scheme prescribing the rights, duties, liabilities and immunities of labor and management which it believed would achieve its stated objects. The Labor Management Relations Act, 1947, is in effect a labor code governing labor management relations which affect commerce. Where Congress intended that particular issues were to be left to state control it specifically so provided.[3] In all other respects Congress occupied the field.

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[3] Section 14(b) expressly reserves to the states the power to prohibit closed or union shop agreements. See *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301. Congress also specifically left with the states the power to use their mediation and conciliation services to help the federal conciliation agencies in labor disputes affecting commerce. Secs. 202(c) and 8(d)(3). In like vein

In the field of strikes in industries affecting commerce, Congress, after considering many proposals to limit the objectives and procedures for which concerted strike action might legally be taken,[4] enacted several specific provisions dealing with strikes in industries affecting commerce:

(a) Congress carefully listed certain types of strikes and made them unfair labor practices. Section 8 (b)(4). Not content with this, Congress made labor organizations liable for damages resulting from such forbidden strikes, Section 303.

(b) Congress also imposed procedural requirements conditioning the legality of strikes in industries affecting commerce. Under Section 8(d) no strike to terminate or modify a collective agreement is permissible in the absence of a sixty-day notice to the other party, notices to federal and state mediation agencies and *bona fide* negotiations in the intervening period. In addition to making the failure to follow these procedural steps unfair labor practices, striking employees in such circumstances lose status as employees and the right to reinstatement.

(c) Congress made special provision for strikes in "national emergencies". Sections 206-210. In the event such strikes are threatened, the National Labor Relations Board is directed to take a secret ballot of employees to determine whether they wish to accept the final offer of the employer for settlement of the dispute. Although the results of such elections are certified to the Attorney General, no majority vote is required to make lawful a strike which results thereafter.

Section 10(a) of the original National Labor Relations Act was amended to permit the National Board to cede jurisdiction in a limited area of industry which is "predominantly local in character" but only where there was no conflict between the applicable state and federal law.

[4] See Senate Report No. 105, 80th Cong. 1st Sess. pp. 13-15.

These provisions of federal law governing strike action in industries affecting interstate commerce must be regarded under decisions of this Court as a plain indication that the Federal Government has occupied the field and the state may not therefore interpose other or different regulations. *La Crosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18; *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767; *Hill* v. *Florida*, 325 U. S. 538; *Hines* v. *Davidowitz*, 312 U. S. 52.

(2) The strike vote requirements of the Michigan Act are plainly inconsistent with the policy of Congress unmistakably demonstrated by its rejection of a proposal to impose a similar requirement for strike votes. The Hartley bill as it passed the House (H.R. 3020, 80th Cong., 1st Sess.) contained provisions making it an unfair labor practice to direct or call any strike without authorization from a majority of the employees voting by secret ballot. Section 8(e)(8). This provision—which was even less restrictive than the Michigan requirement since approval was required only of "a majority of those voting" and not of a majority of those eligible to vote in the bargaining unit—was rejected by Congress, and the Labor Management Relations Act, 1947 as finally enacted has no such requirement. See Senate Report No. 105, *supra*, pp. 13-15. The express rejection by Congress of such a restriction upon the right to strike requires the conclusion that the contrary policy adopted by the State of Michigan must yield. *Hill* v. *Florida*, 325 U. S. 538, 541; *Hines* v. *Davidowitz*, 312 U. S. 52.[5]

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[5] Even a five-day "cooling-off period" required by the Michigan Labor Relations Act of 1939 before it was amended in 1947 was held to be invalid because it conflicted with the right to strike conferred by Section 7 of the National Labor Relations Act. *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. (2d) 465 (C.C.A. 6, 1947) cert. den. 332 U. S. 762.

(3) The strike vote requirements of the Michigan Act are plainly inconsistent with Sections 7 and 13 of the Labor Management Relations Act granting employees in industries affecting commerce the right to strike to obtain legitimate economic objectives. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333.[6] See also *National Labor Relations Board* v. *Draper Corp.*, 145 F. (2d) 199 (C. C. A. 4). No recognized limitations upon these federally protected rights are involved in the instant case. There is no question that the Chrysler strike was called for a legitimate purpose—to secure increased wages. No concerted action of a kind held illegal in such cases as *National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240 or *Southern S. S. Co.* v. *National Labor Relations Board*, 316 U. S. 31 is here involved. Plaintiffs resorted to all means of mediation provided by federal and state agencies and bargained fully with their employer. They met all the conditions precedent required by the federal statute. Their federally protected rights cannot be vitiated by the action of the State of Michigan.

(4) The Michigan strike vote provisions upheld by the State Supreme Court in the instant case conflict with the Labor Management Relations Act in still another equally important respect. Under Section 9e of the Michigan statute, the bargaining unit in which the strike vote is to be taken must be determined by the State Mediation Board. It is provided, however, that "if the group of employees involved in the dispute has been recognized by the employer

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[6] The 1947 amendments did not withdraw the protection given to such strikes by the original National Labor Relations Act; they merely excepted the kind of strikes made unlawful by Section 8(b)(4) of the Labor Management Relations Act. Section 2 (3) of the 1947 Act, like the same section of the original act, protects the status of employees who cease work as a result of a "labor dispute".

or identified by certification, contract or past practice, as a unit for collective bargaining, the board shall adopt such unit." In the case of the Chrysler Corporation, the unit by National Labor Relations Board certification and by contract with the corporation covers employees at plants not only in Michigan but also in Indiana and California (Ex. 4, R. 108). The State of Michigan could not include these out-of-state employees in the unit for a strike vote. Consequently, the bargaining unit under the Michigan statute would necessarily be a different one from that determined by the National Labor Relations Board under Section 9(b) of the Labor Management Relations Act, 1947 to "assure to employees the fullest freedom in exercising the rights guaranteed by this Act."

This Court held in *La Crosse Telephone Corp.* v. *Wisconsin Employment Relations Board, supra*, that in view of Section 9(b) of the Federal Act a state was not free to fix a unit for purposes of collective bargaining covering employees in industries affecting commerce even where the National Labor Relations Board had not acted in the particular case. Here the conflict is even more apparent, for the National Board has certified a collective bargaining unit for the Chrysler Corporation which the state statute does not and cannot adopt.

(5) *International Union, U.A.W.A., A.F. of L., Local 232, et al.* v. *Wisconsin Employment Relations Board, et al.*, 336 U. S. 245, did not, as the Michigan Supreme Court seemed to think, determine the question here presented. This Court in the *International Union* case considered the "unannounced stoppage of work to win unstated ends" not to be a strike,[7] but rather a form of illegal activity similar to the kind of concerted activities held unprotected

[7] "To call these stoppages a strike we would have to ignore petitioners' own conception of this activity. As we have shown, they adopted this technique precisely because it was believed to be 'better . . . than a

in such cases as *National Labor Relations Board* v. *Fansteel Metallurgical Corporation* and *Southern S.S. Co.* v. *National Labor Relations Board, supra.* The Court affirmed the power of the State of Wisconsin over "coercive conduct" involving tactics in a work stoppage concerning which it found the federal act silent and the federal board powerless to deal "in any manner". The Court did not suggest that a state could so condition "the exercise of the unquestioned right to quit work" (quoting from the *Fansteel* opinion) that strikes in industries affecting commerce could be prohibited regardless of their objectives or the entirely peaceful and traditional method of their execution. Since the Court was not dealing with a strike in the International Union case, it did not examine into the extent that the Labor Management Relations Act, 1947 preempts the field in the case of strike action in industries affecting commerce, or the express rejection by Congress of a strike vote requirement as related above.[8]

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strike.'" *International Union U.A.W.A., A.F. of L., Local 232 et al* v. *Wisconsin Employment Relations Board, et al., supra*, ft. nt. 17, p. 264. In fact, the order of the Wisconsin Board under review expressly excepted from the action restrained the "leaving [of] the premises in an orderly manner for the purpose of going on strike."

[8] The National Labor Relations Board filed a brief *amicus curiae* in the *International Union* case in support of the petition for rehearing. The Board argued that state action was excluded even with respect to the "coercive conduct" as described in the Court's opinion. The Board made it quite clear, however, that it considered state intervention in strike action a wholly different case and one in which Congress had even more clearly preempted the field. The brief states (p. 56-57):

"Are the states empowered to reverse this Congressional judgment and to require as a matter of state law that strikes be preceded by a majority vote of the employees? Are states empowered to enjoin strikes affecting interstate industry which do not conform to such provisions?

. . . . . .

"Could a state . . . enjoin strikes not preceded by a state-imposed cooling-off period, or by notice to the employer? State requirements such as these, dealing with the 'method' by which work stoppages can occur, would clearly stand as an obstacle to the effectuation of federal policy."

(6) If the decision below is permitted to stand, the purpose of Congress to provide a uniform policy for labor relations in industries affecting commerce can be frustrated by state action which may substitute the diverse views of state legislatures as to treatment of labor relations in the various states. In fact, under the decision of the Michigan Supreme Court individual states can affect and even negate the labor relations policies of sister states. The instant case is a good example. The State of Michigan in this case has imposed a requirement which affects the employees of a corporation with plants in three states, all of whom are joined in a single union for purposes of collective bargaining under federal law. The members of plaintiff union who are employees of the Chrysler Corporation in Indiana and California would not participate in the Michigan strike vote. Yet their collective bargaining rights would be curtailed by an adverse strike vote in Michigan.

This Court, in the *Bethlehem Steel* and *La Crosse Telephone Corp.* cases, has recognized the Congressional policy in both the Wagner Act and the Labor Management Relations Act, 1947 that labor relations in industries affecting interstate commerce should not be governed by the diverse views of forty-eight legislatures. To hold, as the Michigan Supreme Court did, that the entire question of the right to strike is one which the states may regulate and control, would require the conclusion that Congress, in its comprehensive legislation in 1947, failed to adopt a policy with respect to perhaps the most important single aspect of labor relations.

(7) All of the above questions are implicit in the issue raised by this appeal. It is respectfully submitted that they present a most substantial federal question.

II

The Michigan Statute Violates the Due Process Clause of the Fourteenth Amendment

The Michigan statute, which the Supreme Court of the State held to be consistent with the Fourteenth Amendment, prohibits all strikes unless a majority of the employees in the applicable bargaining unit vote in favor of the action. The statute is not limited to strikes which may "imperil the national health or safety" (Secs. 206-210, Labor Management Relations Act, 1947) or otherwise adversely affect the public; indeed, an entirely separate procedure is presented in Section 13 of the statute for public utilities and hospitals. What Sections 9, 9a and 22 of the Michigan statute do is to forbid all strikes in all industries regardless of the provocation unless a majority of the collective bargaining unit has voted in favor of the action. So sweeping a legislative fettering of the right to strike cannot be justified under the Fourteenth Amendment. Cf. *Nebbia* v. *New York*, 291 U. S. 502, 525; *Schneider* v. *State*, 308 U. S. 147, 162; *Pollock* v. *Williams*, 322 U. S. 4.

This is not a case of union activity to accomplish an unlawful result. See *Giboney et al* v. *Empire Storage & Ice Co.*, 336 U. S. 490. Nor is it a case where, although the objective is lawful, the strike is attended by violence. See *Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287. What is before the Court here is a prior restraint on a peaceful strike for a lawful purpose and upon the speech, assembly and collective bargaining which induce that strike. Such a restraint upon plaintiffs' rights of free speech, free assembly and free collective bargaining cannot stand. *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson*

v. *California*, 310 U. S. 106, *American Federation of Labor* v. *Swing*, 312 U. S. 321. *Thomas* v. *Collins*, 323 U. S. 516.

Furthermore, the requirement that a majority of the *entire bargaining unit* must vote approval before strike action is taken is a wholly unreasonable method of accomplishing the legislative purpose, even assuming that the over-all requirement of a fair strike vote is within the police power of the state. The bargaining unit adopted by the state board is not, as we have already seen, the actual bargaining unit that negotiates with the Chrysler Company. Even more significant, the rights of the employees who desire to strike and who vote their approval will be adversely affected by those persons in the bargaining unit who are unable to cast their ballots because of illness, absence or otherwise. Furthermore, the ability of the plaintiff Union to carry out successful collective bargaining with the company will be adversely affected by the action or inaction of the non-Union employees in the bargaining unit. A strike vote based on a majority of an artificial unit which does not bargain and which includes the sick and the absent as well as the non-Union employees has no reasonable relation to the ends in view and thus deprives plaintiffs of their liberty without due process of law. Cf. *Western & A.R.R.* v. *Henderson*, 279 U. S. 639; *Treigle* v. *Acme Homestead Ass'n*, 297 U. S. 189, 197; *Schneider* v. *State*, 308 U. S. 147, 162.

No decision of this Court deals directly with the question at hand. Similar restraints upon the right to strike have, however, been declared unlawful under the due process clause by a statutory federal district court and by the highest courts of two states. See *Stapleton* v. *Mitchell*, 60 F. Supp. 51 (D. Kan. 1945); *Alabama Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. (2d) 810; *American Federation of Labor* v. *Bain et al.* 165 Ore. 183, 106 P.

(2d) 544. The federal question presented under the Fourteenth Amendment is plainly a substantial one.

Respectfully submitted,

IRVING J. LEVY,
JOSEPH L. RAUH, JR.,
HAROLD A. CRANEFIELD,
Counsel for Appellants.

SEPTEMBER 26, 1949.

APPENDIX A

Michigan Statute

Act No. 176 of the Public Acts of 1939, as amended by Act No. 318 of the Public Acts of 1947

Sec. 9. No strike or lockout shall take place or be put into effect until and unless each of the steps have been taken and the requirements complied with as provided in this act.

1. In the event the parties thereto are unable to settle any dispute, the employees or their representative, in the case of impending strike, or the employer or his agent, in the case of an impending lockout, shall serve notice upon the board of such dispute together with a statement of the issues involved. Said notice may be served personally on any member of the board and a copy thereof personally served upon the other party, or sent by registered mail to the board at a regularly established office thereof and to the employer at his regular address not less than 10 days before the strike or lockout is to become effective, or in case of an industry affected with a public interest or a public utility or hospital, said notice shall be so served not less than 30 days before the strike or lockout is to become effective.

2. Upon receipt of such notice it shall be the duty of the board to exercise the powers herein granted to effect a settlement of such dispute by mediation between the parties. Prior to the calling of an election as provided hereinafter, it shall be the duty of each of the parties to such dispute to actively and in good faith participate in the mediation thereof. At least 1 member of the board, to be designated by the chairman, shall actively participate in the negotiations to mediate any dispute in an industry affected with a public interest including any public utility or hospital.

Sec. 9a. In the event that it becomes apparent to the board that there is no reasonable probability of settlement of such dispute by mediation and that further efforts

to that end would be without avail, there shall be held in the case of any impending strike, an election upon such issue which election shall be conducted and supervised by the board. In the event either party to said dispute notifies the board in writing, a copy of which shall at the same time be served on the other party, that in the opinion of such party, further efforts to settle such dispute by mediation would be without avail, it shall be the duty of the board to cause an election to be held within 10 days of the receipt of such notice unless it is not practical to hold such election within said period, in which event said election shall be held within 20 days of receipt of such notice: PROVIDED, That such board need not call more than 1 election involving the issues set forth in the notice served upon the board. The expense of such election shall be defrayed by the parties to such dispute either equally or upon such other basis as may be agreed upon. Every employee in the bargaining unit shall be entitled to vote in such election and in order to authorize a strike under the provisions of this act, a majority of all employees in such bargaining unit must vote in favor of such action. Said election shall be by secret ballot, and shall be held on the premises where those voting are employed. The board shall have the power and authority to promulgate such rules and regulations as shall be necessary to effectively conduct any election and the wilful violation of any such rules and regulations shall be a violation of the provisions of this act.

SEC. 9b. It shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of the business during the entire period in which the respective steps required by section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a.

SEC. 9c. The board, after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit,

or a plant unit, or a subdivision of any of the foregoing units: PROVIDED, HOWEVER, That if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice, as a unit for collective bargaining, the board shall adopt such unit.

SEC. 22. Any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, or who shall cause or call a lockout, without first having served notice as required in section 9 of this act, or while mediation is pending as prohibited by this act, or who shall knowingly and tion is pending under said section 9, or while arbitration proceedings are pending under sections 9d and 13 of this act, or any person who shall engage in unauthorized picketing as prohibited by this act, or who shall knowingly and wilfully violate any of the rules or regulations promulgated under section 9a and section 9c, or any of the provisions of section 9f, shall upon conviction thereof be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

APPENDIX "B"

Findings and Opinion of Circuit Court Denying Motion to Dismiss and Granting Temporary Injunction

At the hearing of the Order to Show Cause upon the issuance of a temporary injunction in this cause, the defendant moved to dismiss the Bill of Complaint.

It was argued that the jurisdiction in equity to enjoin the prosecution of criminal proceedings existed only as an incident of jurisdiction otherwise acquired; that the defendant had made no threat to prosecute any of the plaintiffs; and that the plaintiffs make no allegations that they have violated or intend to violate any penal provision of Act No. 318, Michigan Public Acts of 1947.

I find all of these contentions without merit. The jurisdiction of equity to protect property and civil rights against irreparable injury where the legal remedy is inadequate is clearly established. General Motors Corporation v. Attorney General, 294 Mich. 558, 564; Truax v. Raich, 239 U. S. 33, 37.

The Bill of Complaint adequately alleges that an election has been demanded by the State Board of Labor Mediation and that the plaintiffs as individuals and in association desire to urge that the Chrysler employees in the County of Wayne go out on strike and stay out on strike until a collective bargaining agreement is reached, and that Sections 9, 9a, and 9b of the statute make such strike unlawful, and Section 22 imposes criminal penalties for instigating such a strike while mediation or election is pending.

The law clearly penalizes what the plaintiffs desire to do, and this raises a serious question of whether the plaintiffs are threatened with the impairment of their constitutional rights.

The remedy by defending against criminal proceedings is clearly inadequate. The excellent statement on this subject by U. S. Circuit Judge Murrah, for the Court in Stapleton v. Mitchell, Atty. Gen. 60 Fed. Supp. 51, 61, is worthy of quotation:

> "In this setting we think it is the inherent prohibitions of the statute standing alone which impose the unconstitutional restraint, and those against whom the statute is plainly directed should not be required to abide the processes of criminal justice in order to obtain the redress to which they are entitled under the Federal Constitution."

The mere silence of the Prosecuting Attorney should not avail to keep the plaintiffs in jeopardy. The Attorney General intervening at the hearing has settled any question concerning prosecution or the threat thereof by announcing in open court he would require prosecution under the law unless such action was enjoined. Thereupon, plaintiffs' counsel stated that he would amend his Bill to show this.

The motion to dismiss is denied, and a temporary injunction may issue continuing the terms of the restraining order.

May 22, 1948.

THEODORE J. RICHTER,
Circuit Judge.

APPENDIX "C"

Opinion of the Circuit Court

The plaintiffs, the International Union of Automobile, Aircraft and Agricultural Implement Workers, C.I.O., generally known as the U. A. W., C.I.O., Emil Mazey, its acting President, for himself, the Union members, and for 1776 Chrysler employees, together with other Union officers, and other industrial employees who were leaders in recent strikes, bring this bill in equity to restrain the Prosecuting Attorney of Wayne County, and the Attorney General, who appeared by intervention, from taking criminal proceedings against the members of the U.A.W., C. I. O., based upon alleged violations of those provisions of Act 318, P.A. 1947, which declared unlawful strikes instituted without first securing approval by a majority of the employees in the State in the collective bargaining unit of the plant involved in an election held in accordance with the statute and which subject to criminal penalties persons who call or instigate a strike while the election is pending. The statute also provides for the civil remedies of injunction and damages on account of strikes so made unlawful.

The case was fully tried, and exhaustive and able briefs were filed.

On the part of the plaintiffs it is claimed that their rights of liberty and property are impaired contrary to Sections 4 and 16, Article II of the Michigan Constitution, and the due process clause of the Fourteenth Amendment of the Federal Constitution, and that the provisions complained of are repugnant to the collective bargaining rights granted

to the unions under the Taft-Hartley Act and to the prescriptions of that law in support of these rights.

The evidence shows that there have been and will be numerous violations of the election requirements of Act 318 P.A. 1947 on the part of the plaintiffs and U.A.W. members, and by the very terms of the Statute it would seem that prosecutions can be, and if the statute is valid, should be sufficiently vigorous and extensive to prevent a strike not authorized by the statute. Consequently, the plaintiffs may complain not merely of a specific instance in which their rights may be impinged, but "of the pervasive threat inherent in its (the statute's) existence." *Thornhill* v. *Alabama*, 310 U. S. 88, 97. Obedience to the statute involves the continuous sacrifice of the rights claimed. In this situation the jurisdiction of equity to determine the validity of this law is peculiarly applicable, for if it is invalid it involves a continuous impairment of the right to associate in common action to withhold labor as a means of obtaining a better wage bargain. The rights involved are of equal dignity with those to conduct a business. Against the serious claim that the statute, on its face impairs fundamental civil rights, a determination of that claim by a court of equity is most appropriate.

The defendants in their briefs contend only that the right to strike is not absolute, but may be subjected to limitation. But the briefs submitted in their behalf are noteworthy, in that they disclose no case which approves the qualification in question here. On the other hand, counsel for the plaintiffs narrow their claims down to the specific limitations here involved. They insist that there is not involved the power of the state to qualify the right to strike for a purpose which might be made unlawful, or in a business coupled with a public interest, nor in the face of some public emergency. Other sections of the statute deal with hospitals and public utilities and provide for compulsory arbitration of wage disputes in such cases. There is in question here the sweeping terms of the statute requiring a majority vote in the bargaining unit as a condition to the lawfulness of a strike in ordinary industry. The statute applies to all strikes without distinction as to purpose and to all occasions without regard to emergency. The question is whether the

right to strike for any group of employees may be made subject to the approval of a majority of the employees in the collective bargaining unit.

This question, I am persuaded, must be answered "No." It is not inherently reasonable that the right should exist with majority approval and be denied without it. So long as wage determination is a matter of bargaining between employers and employees, it is unreasonable to prevent by coercion of law any work stoppage by two or more employees acting in concert if they are dissatisfied with the conditions of employment. The right of a working man to induce his fellow employee to quit work with him for proper purposes is individual. He can scarcely be deprived of this right in all cases where he or others fail to persuade a majority to act with them. In *Beck* v. *Teamsters' Protective Union*, 118 Mich. 497, the Court stated:

> "So, also, the laborers have the right to fix a price upon their labor and to refuse to work unless that price is obtained. Singly, or in combination, they have this right. They may organize in order to improve their condition and secure better wages. They may use persuasion to induce men to join their organization or to refuse to work, except for an established wage."

That these rights are within the scope of constitutional protection is well expounded by the Supreme Court of Alabama in *Hotel and Restaurant Employees Alliance* v. *Greenwood*, 249 Ala. 265, 30 So. 2d 696. The numerous authorities therein cited render it unnecessary to repeat them here. The point is forcefully made that freedom of speech in respect to labor disputes is bound up with the necessary implication of freedom to carry into action what is urged.

> "It would be but a hollow principle to say a union is free to advertise a labor dispute by picketing but may not strike to enforce its demands. Scofes v. Helmer, 205 Ind. 596, 187 N.E. 662; 664."

Freedom of speech includes the right to induce others not to buy merchandise or perform services. *Carlson* v. *California*, 310 U. S. 106, 112.

In *Alabama State Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. 2d 810, statutory provisions comparable with those in question here was held unconstitutional, and a three judge United States District Court held sections of the 1943 Kansas Labor Law substantially identical with the provisions here involved, to be unconstitutional. *Stapleton* v. *Mitchell*, 60 Fed. Suppl. 51. The Oregon Supreme Court held to be unconstitutional a law restraining picketing unless authorized by a majority of the employees in *American Federation of Labor* v. *Bain*, 165 Ore. 193, 206.

These decisions, which appear in no manner contradicted or qualified by others, impel me to hold that so much of Act 318 Public Acts of 1947 which require a strike vote and penalize the calling or instigating strikes while an election is pending are void as contravening the due process clauses of the State and Federal Constitutions.

It has been strongly urged that these provisions are repugnant to the Labor Management Relations Act (Pub. L. No. 101, 80th Cong. 1st Sess.), generally known as the Taft-Hartley Act. While the states retain their fundamental police powers in matters of local concern even in the face of Federal Legislation dealing with matters affecting commerce, this legislation qualifies the collective bargaining provisions of the federal Act in two important ways. The collective bargaining unit under the federal Act may extend to and include plants of a single industry in more than one state. Thus the collective bargaining under federal prescription is affected by an affirmative or negative strike vote in Michigan. Furthermore, the federal Act grants collective bargaining rights. Sec. 9(a) provides that "representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment."

The exercise of collective bargaining rights is controlled by the federal law, and this control cannot be impaired or modified by the states. Under existing conditions it is im-

possible to dissociate the strike from the process of collective bargaining.

The question of representation of the bargaining unit by the majority and the procedure conferring bargaining rights are all matters covered by this law, and any revocation of authority must be left to the Congress. The State cannot interfere with the representation policies provided by the Taft-Hartley Act.

A decree in accordance with this opinion, declaring unconstitutional the election requirements of the Bonine-Tripp Act and enjoining the defendants from enforcing criminally a violation thereof in respect to the plaintiffs may be prepared and submitted.

THEODORE J. RICHTER,
Circuit Judge.

Dated: August 2, 1948.

APPENDIX "D"

Decree of the Circuit Court

At a session of said Court held in the County Building in the City of Detroit, this 11th day of August, A. D., 1948. Present: The Honorable Theodore J. Richter, Circuit Judge.

This cause having come on to be heard upon the Bill of Complaint, Amended and Supplemental, and the Answers thereto and the Court having been fully advised in the premises, and it appearing that Section 22 of Act 318 Public Acts of 1947 subjects to criminal penalties any person who either individually or as one of a group of persons instigates a strike or who shall call or cause a strike to be placed in effect while an election is pending under Section 9; and Sections 9, 9a, and 9b require with respect to ordinary industrial enterprises not hospitals or public utilities the holding of an election for the purpose of taking a strike vote of the employees in the collective bargaining unit of the industries defined in said statute, and prohibit and make unlawful any strike unless in such strike vote the same shall be approved

by the majority of the employees in said collective bargaining unit and said strikes not so approved may be the subject of legal and equitable remedies as provided in Section 22a; and the Court having filed a written opinion determining the material facts and the applicable law; and that the rights and protection sought by the plaintiffs are in respect to subjects of collective bargaining, wages and conditions of employment and election requirements in the settlement of jurisdictional disputes pursuant to Section 9c are not involved; for the reasons in said opinion stated. upon motion of Rothe and Zwerdling, Harold Goodman of Counsel, attorneys for plaintiffs.

It is ordered, adjudged, and decreed, as follows:

1. That the provisions of Act 318 Public Acts of 1947 requiring the taking of a strike vote and making a strike unlawful unless the same shall first be approved by a majority vote in the collective bargaining unit, and subjecting to criminal prosecution any person who either individually or as one of a group instigates a strike or who shall call or cause a strike to be placed in effect while an election is pending under Section 9 of said Act, except insofar as the said provisions are or may be applied in respect to jurisdictional strikes as provided in Section 9c, are null and void as in contravention of Art II. Secs. 4 and 16 of the Constitution of the State of Michigan, of the 14th Amendment of the United States Constitution, and in application to any industry affecting interstate commerce, (in view of the National Labor Management Relations Act) of Art. 1, Sec. 8 (3) of the Constitution of the United States.

2. That the defendant, James N. McNally, as Prosecuting Attorney of said County, and Eugene F. Black, as Attorney General of the State of Michigan, be and they hereby are perpetually enjoined from prosecuting in said County of Wayne the plaintiffs, their officers, agents, and members for any alleged violations of the provisions of Act 318 Public Acts of 1947 declared unconstitutional in Paragraph 1 hereof.

3. Nothing herein contained shall prejudice or prejudge the application of Act 318 Public Acts of 1947 to hospitals or public utilities or jurisdictional strikes nor shall any part

or clause of said Act other than those within the scope of Paragraph 1 hereof be considered as in any manner affected by this decree.

THEODORE J. RICHTER,
Circuit Judge.

APPENDIX "E"

STATE OF MICHIGAN, SUPREME COURT

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., EMIL MAZEY, in his own behalf and in behalf of 1776 employees of the Chrysler Corporation, NORMAN MATTHEWS, ARTHUR GRUDZEN, ALEX BARBOUR, WILLIAM KUCK, RALPH FILECCIA, ALFRED S. MARCANGELO, RICHARD T. LEONARD, LEONARD MCPHERSON, FREDRICK JOHNSTON, WALTER ROOD, WILLIAM T. ARCHER, MICHAEL LACEY, HARRY SOUTHWELL AND BLAINE MARRIN, Plaintiffs and Appellees,

v.

JAMES N. MCNALLY, Wayne County Prosecuting Attorney, and EUGENE F. BLACK, Attorney General of the State of Michigan, Defendants and Appellants.

Before the entire bench.

NORTH, *J.*

Plaintiffs, commonly known and herein designated as UAW-CIO, and others, sought and obtained a decree enjoining the prosecuting attorney of Wayne County and the attorney general, who intervened as a defendant, from prosecuting criminal proceedings under Act No. 318, Pub. Acts 1947,* which criminal prosecutions were threatened under circumstances hereinafter noted. From the decree entered in the circuit court the defendants have appealed.

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* Act No. 176, Pub. Acts 1939, as amended; Stat. Ann. 1947 Cum. Supp. § 17.454 (1) et seq. We are not herein concerned with the latest amendment to this statute. See Act No. 230, Pub. Acts 1949.

A dispute involving wages arose between UAW-CIO union employees and their employer, the Chrysler Corporation. Resort was had to collective bargaining. The notices required by State and Federal law regulating labor disputes were given and mediation sessions between the respective parties followed. While such sessions were pending the union officers concluded that further mediation would be of no avail and thereupon gave notice to the representatives of the Chrysler Corporation that a strike would be called, and such strike did go into effect on the forenoon of the following day. The calling and putting into effect of this strike was obviously in violation of the terms of the statute about to be noted and rendered plaintiffs subject to threatened criminal prosecution, providing the statute is valid.

Act No. 318, Pub. Acts 1947, commonly known as the Bonine-Tripp act, provides that in the event the parties to a controversy such as here involved are not able to agree among themselves or that a solution and determination of their controversy cannot be reached by mediation or arbitration, before a strike may be called an election shall be held in accordance with the terms of the statute and the strike shall not be instituted unless "a majority of all employees in such bargaining unit * * * vote in favor of such action." Act No. 318, § 9a, Pub. Acts 1947. Section 22 of the act in part reads:

"Any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, * * * while mediation is pending * * *, or while an election is pending, * * * shall upon conviction thereof be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment."

It is plaintiffs' contention that insofar as the statute makes the calling of an election and the affirmative vote of a majority of all employees in the bargaining unit involved in the labor controversy a prerequisite to calling or instituting a strike and provides a penalty for violation of the statute, it impairs the rights of plaintiffs in violation of

sections 4 and 16, Article II, of the Michigan Constitution, and the due process clause of the Fourteenth Amendment of the Federal Constitution, and further that the noted statutory provision is repugnant to the right of collective bargaining granted to unions under the National Labor Management Relations Act, i.e.—the Taft-Hartley Act. (61 Stat. 136; 29 U.S.C.A. 1948 Cum. Supp. §§ 141-197). On this appeal defendants have presented two questions, as follows:

"1. Do the election requirements of Act No. 318, secs. 9, 9a, 9b, and 9c, Pub. Acts 1947, known as the Bonine-Tripp Act, and the penal provisions thereof, sec. 22, violate plaintiffs' and appellees' rights of freedom of speech and due process of law as guaranteed by Art. II, secs. 4 and 16 of the Constitution of Michigan, 1908, and Amendments 1 and 14, U. S. Constitution?"

"2. Has Congress, in the National Labor Relations Management Act (Taft-Hartley Act), by its expressed intent therein, so preempted the field of regulation of labor-management relations in industries affecting Commerce that any State police power regulation of such relations in industries affecting Commerce must necessarily be in conflict with such federal law and therefore null and void?"*

In granting plaintiffs the injunctive relief prayed, the circuit judge placed decision on three grounds: That the statutory requirement of an election was (1) in violation of Article II, §§ 4 and 16 of the Michigan Constitution; (2) in violation of the Fourteenth Amendment of the Federal Constitution; and (3) as affecting interstate commerce in violation of Article 1, § 8 (3) of the Federal Constitution—in view of the National Labor Management Relations (Taft-Hartley) Act.

The recent decision of the United States Supreme Court in International Union, U.A.W., A.F. of L., Local 232 *v.* Wis-

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* Question number two is restated by appellees as follows:

"2. In view of the National Labor Management Relations Act and the provisions requiring collective bargaining by representatives in industries affecting commerce, was it within State authority to make a strike unlawful if not approved by a majority of the employees in the collective bargaining unit?"

consin Employment Relations Board, — U.S. — (decided February 28, 1949), is informative in the field of law pertinent to the instant case. For brevity we refer to the cited case as the Wisconsin case. That suit involved the constitutionality of the Wisconsin Employment Peace Act, the pertinent portion of which we quote in the accompanying footnote*. At the outset of the United States Supreme Court's opinion it is stated that the validity of the Wisconsin statute "is challenged because it is said to transgress constitutional limitations imposed by the Thirteenth and Fourteenth Amendments and by the Commerce Clause as implemented by the National Labor Relations Act (49 Stat. 449) and the Labor Management Relations Act of 1947." 61 Stat. 136; 29 U.S.C.A. 1948 Cum. Supp. §§ 141-197. Negotiations incident to a new collective bargaining contract between the employer, the Briggs & Stratton Corporation, and its employees reached a deadlock. Thereupon the union resorted to repeatedly calling union meetings during working hours and without warning the employees would leave their work and return at their pleasure. This occurred 26 times within approximately four and one-half months. This procedure had the desired effect of disrupting the employer's business, and as described by the union leaders was "a new technique for bringing pressure upon the employer" to obtain concessions incident to the union's demands made in the collective bargaining proceedings.

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* "The Wisconsin Employment Peace Act provides in part as follows:

"(2) It shall be an unfair labor practice for an employe individually or in concert with others: (a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family. * * * (c) To cooperate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike. * * * (h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike." Wis. Stat. (1947) c. 111 § 111.06.

The employer instituted proceedings before the Wisconsin Employment Relations Board. After prescribed procedure that board ordered the union to cease and desist from "engaging in any concerted efforts to interfere with production by arbitrarily calling union meetings and inducing work stoppages during regularly scheduled working hours; or engaging in any other concerted effort to interfere with production of the complainant except by leaving the premises in an orderly manner for the purpose of going on strike."

The union sought and obtained in the Wisconsin courts review of the board's order. In the particular above noted the Wisconsin Supreme Court affirmed the board's order (250 Wis. 550; 27 N. W. 2d 875); and in that respect the United States Supreme Court affirmed the holding of the Wisconsin Supreme Court. While the issue in the Wisconsin case was not identical with that in the instant case, the reasoning and holding in that case are applicable to the case at bar.

Plaintiffs' first argument in support of their contention that the statute here involved is unconstitutional is stated in their brief as follows: "To prohibit by law calling or instigating a strike without distinction as to object or other circumstances is so unreasonable as to deny freedom of speech and due process of law."

As a sufficient refutation of this contention it need only be noted that the Bonine-Tripp act does not prohibit calling or instituting a strike incident to any legitimate labor controversy. Instead the act merely requires as a condition precedent to calling or instituting a strike the approval so to do expressed at an election by the vote of a majority of the employees in the bargaining unit. Quite universally there are three parties interested in and affected by a strike—the employer, the employees, and the public. Plaintiffs' statement in their brief concerning picketing is equally applicable to a strike:

"Nobody is really confused into thinking that picketing is not something more than speech or that the right to picket as supported by freedom of speech is not without limits."

In the Wisconsin case, supra, the ultimate decision was that the state might provide against undue coercion. A strike is not only a means of exercising the right of free speech, but it is likewise a medium of exercising coercion. As such it is subject to reasonable regulation by the state in the exercise of its police power. It may well be inferred that the legislature in enacting the statutory provision under consideration was at least to some extent motivated by a desire to prevent stoppage of work in a plant as to all of the employees, which stoppage was caused by a small number of employees in a key position going on strike. The detriment in such cases to the remaining majority of the employees, to the employer, and also generally to the public, is obvious; and the legislature might well have considered it a justifiable reason for restricting or limiting the union's right to institute a strike incident to collective bargaining proceedings as prescribed in the Bonine-Tripp act.

"Being a legislative judgment it is presumed to be supported by facts known to the legislature unless facts judicially known or proved preclude that possibility." South Carolina Highway Department v. Barnwell Brothers, Inc., 303 U. S. 177, 191.

"The most that can be said is that whether that determination was an unreasonable, arbitrary or unequal exercise of power is fairly debatable. In such circumstances, the settled rule of this court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question." Zahn v. Board of Public Works, 274 U. S. 325.

"The right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces has not previously been doubted. * * *

"But the circumstances that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. * * *

"We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist.'". Carpenters Union v. Ritter's Cafe, 315 U. S. 722.

We think it is not an unreasonable exercise of the state's police power to forbid resort to a strike which is not approved by a majority of the employees involved, and thereby protecting both the majority of the employees in the bargaining unit and the public. Nor is it a denial of free speech any more than is the limitation of certain other phases of action in labor controversies. Carpenters Union v. Ritter's Cafe, supra; Lincoln Union v. Northwestern Co., 335 U. S. 525. In disposing of a like contention in the Wisconsin case, *supra*, the court said:

"It is further contended that the statute as applied invades rights of free speech and public assemblage guaranteed by the Fourteenth Amendment. We recently considered a similar contention in connection with other state action concerning labor relations. *Lincoln Federal Labor Union et al.* v. *Northwestern Iron and Metal Co.*; and *Whitaker et al.* v. *North Carolina*, 335 U. S. 525 and *American Federation of Labor* v. *American Sash & Door Co.*, 335 U. S. 538. For reasons there stated, these contentions are without merit."

The Wisconsin statute, which in its requirement of a majority vote of the employees of the bargaining unit is quite identical with the like provision in the Bonine-Tripp act, was held valid as against like contentions as herein presented, and re-hearing was later denied, in Hotel and Restaurant Employees' International Alliance, Local No. 122 v. Wisconsin Employment Relations Board, 236 Wis. 329; 294 N. W. 632; 295 N. W. 634. On appeal to the United States Supreme Court the decision of the Wisconsin court was affirmed. See 315 U. S. 437. In its opinion the Supreme Court of the United States said:

"The specific question for decision is the constitutional validity of an order made by the Wisconsin Employment

Relations Board acting under the Employment Peace Act, Wisconsin Laws of 1939, c. 57. * * *

"What public policy Wisconsin should adopt in furthering desirable industrial relations is for it to say, so long as rights guaranteed by the Constitution are respected. *Aikens* v. *Wisconsin*, 195 U. S. 194; *Senn* v. *Tile Layers Union*, 301 U. S. 468. As the order and the appropriate provisions of the statute upon which it was based leave the petitioners' freedom of speech unimpaired, the judgment below must be affirmed."

It is worthy of note that the United States Supreme Court in its opinion literally quoted the provision of the Wisconsin statute which makes it " 'an unfair labor practice' " to " 'Cooperate in engaging in, promoting or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike' * * *."

As pertinent to the issue in the instant case we quote the following from the opinion of the Wisconsin supreme court in the Hotel and Restaurant Employees' Local No. 122 case, 236 Wis. 329, 345:

"We find nothing in the act which prevents a minority of a collective-bargaining unit from withdrawing from employment either singly or in concert. (For like provision in the Bonine-Tripp act, see § 13a.) * * *

"The petitioners complain that the characterization of the acts of employees as unfair labor practices cannot be made to depend on the action of a majority of a collective-bargaining unit; that the legislature cannot place it within a power of a majority of the collective-bargaining unit to authorize a strike. This argument is an attack upon a principle which is fundamental in the attempt of the legislature and of congress to regulate labor relations. The principle upon which authorized collective bargaining depends is that the rule of the majority within an appropriate collective-bargaining unit shall bind the minority. We see no way by which the principle of collective bargaining can be maintained unless this right of a majority of a collective-

bargaining unit to speak for the unit including the minority is maintained. A bargain on behalf of a collective-bargaining unit amounts to nothing, if after it is made the individuals or some of them comprising that unit are not affected thereby. This principle is explicit in the National Labor Relations Act (29USCA § 151 et seq.), in the Railway Labor Peace Act (45 USCA § 151 et seq.), and in the act now under consideration. If the majority of a collective-bargaining unit can thus coerce the minority in the matter of bargaining, we see no reason why the legislature may not vest in a majority of the unit power to determine whether such conditions obtain in the employment as warrant the calling of a strike in an effort to remedy them. * * *

"In providing for 'industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services' * * *, we see no reason why the legislature may not forbid concerted picketing and boycotting in aid of an unauthorized strike. * * * All these questions relating to rights of employees to organize, conduct strikes, boycotts, and other coercive measures are in the field of public policy. As the court of appeals of New York said in the case already cited (May's Furs & Ready-To-Wear, Inc., v. Bauer (1940), 282 N.Y. 331; 26 N.E. (2d) 279), and as this Court has said many, many times, these questions are for the legislature. Courts do not sit to pass upon the wisdom or unwisdom of the acts of the legislature. * * *

"Both parties to a labor dispute are under the same constitution and both are subject to the valid acts of the legislature. Just where the line should be drawn in an effort to balance the bargaining power of the parties is primarily a matter of public policy, for the legislature and not a question of law for the courts."

While seemingly quite unnecessary, it may be noted that section 19 of the Bonine-Tripp act provides:

"This act shall be deemed an exercise of the police power of the state of Michigan for the protection of the public welfare, safety, prosperity, health and peace of the people;

and all the provisions of this act shall be liberally construed for the accomplishment of said purposes."

In the light of the authorities hereinbefore cited we are of the opinion that, contrary to appellees' contention, the provision of the act under consideration is not "so unreasonable as to deny freedom of speech and due process of law."

In so concluding we are mindful that in a case decided by the Federal district court in Kansas an opposite conclusion was reached. See Stapleton v. Mitchell, 60 Fed. Supp. 51. We also note the decision in Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 2d 810; and American Federation of Labor v. Bain, 165 Ore. 183, cited by appellees and relied upon in the opinion of the trial judge. But the statutory provision considered in the Alabama case was materially different than the Michigan statute in the following respect. The vote required to authorize a strike was "the vote of the majority of the regular employees working in the business, plant, or in such unit thereof * * *." In construing this provision, the court said:

"The denial of the right to strike is made to rest, not upon the rule of the majority of any bargaining unit, or in any craft to which the workmen belong, but upon the whim or caprice of others who may be employed in the business, plant, or unit thereof, whoever they may be and whatever views they may entertain as to labor or labor unions."

In the remaining case, American Federation of Labor v. Bain, *supra*, the court held invalid the Oregon statute which prohibited picketing by a minority of the employees of a given employer. The court said: "* * * the controversy has resolved itself largely into the question whether the regulation, or, as the plaintiffs would have it, the prohibition, of picketing and boycotting in Sections 1 and 3, invades the plaintiffs' fundamental rights and liberties of freedom of speech and of assemblage." Obviously the issue in the Oregon case was quite materially different than

that in the instant case, and hence the holding in the Oregon case is not persuasively material to decision herein.

As earlier noted herein the remaining question as restated in appellees' brief is as follows:

"2. In view of the National Labor Management Relations Act and the provisions requiring collective bargaining by representatives in industries affecting commerce, was it within State authority to make a strike unlawful if not approved by a majority of the employees in the collective bargaining unit?"

On this issue the position of appellees is stated in their brief as follows: "The strike election provisions of the Bonine-Tripp Act conflict with the National Labor Management Relations Act."

Admittedly, as applied to interstate commerce, if the Bonine-Tripp Act does conflict with the provisions of the National Labor Management Relations Act, the former is not enforceable; but if there is no conflict the validity and enforceability of the Bonine-Tripp Act is not impaired on this ground. In appellees' brief it is pointed out that as related to collective bargaining the National Labor Management Relations Act contains specific provisions, and it is asserted "it covers the field of the strike in consequence of failure to reach an agreement." And appellees' brief continues:

"It (the Federal act) sets the following conditions precedent to striking: (1) Sixty days notice of contract termination; (2) Offer to negotiate new contract; (3) Notice to Federal and State conciliation boards of existence of a dispute; and (4) continues in full force and effect without resorting to strike or lockout all the terms and conditions of the existing contract for a period of 60 days." See National Labor Management Relations Act (1947), § 8.

We do not discover in the foregoing any provisions which are inconsistent with or in conflict, either expressly or by necessary inference, with the requirement of the Bonine-Tripp act that as precedent to calling a strike there shall be a vote of the employees of the bargaining unit; nor has there otherwise been called to our attention any such in-

consistent or conflicting provisions in the Bonine-Tripp act. The very fact that subdivision 3 of the above quotation requires notice to "State conciliation boards" indicates that the Federal act was not thought to be exclusive of permissible state regulations. Further, it is difficult, if not quite impossible, to read the decision in the Wisconsin case hereinbefore noted without coming to the conclusion that in the exercise of its police power a state may by legislation regulate the exercise of the right of employees to strike, providing such regulations are not in conflict with or inconsistent with Federal regulations.

As stated by Justice Brandeis in Dorchy v. Kansas, 272 U. S. 306; "Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike." That individual states have the right within the valid exercise of police power to regulate the calling of a strike, and that restrictions of that character do not violate the constitutional liberty possessed by employees or union labor organizations, has been adjudicated by highest authority. See Nebbia v. New York, 291 U. S. 502. In Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, 315 U. S. 740, 749, it was said:

"Furthermore, this Court has long insisted that an 'intention of Congress to exclude States from exerting their police power must be clearly manifested.' * * * We will not lightly infer that Congress by the mere passage of a Federal Act has impaired the traditional sovereignty of the several States in that regard."

That congress in passing the Labor Management Relations Act of 1947 did not intend thereby to deprive the states of any and all power to limit or qualify the right to strike, is persuasively indicated by section 13 of the Act which reads:

"Nothing in this Act, *except as specifically provided for herein*, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, *or to affect the limitations or qualifications on that right.*"

And in Kelly v. Washington, 302 U. S. 1, 10; 82 L. Ed. 3, 10, the court said:

"The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.' ".

We conclude that in the particular case under consideration the Michigan statute is not in conflict with the National Labor Management Relations (Taft-Hartley) Act.

In considering this case we have not overlooked appellees' contention that enforcement of the statutory provision herein involved would be in conflict with the commerce clause of the United States Constitution, Article I, § 8 (3). The test would be:—Does this statutory provision impose an undue burden upon interstate commerce? We think it does not. This issue was quite fully considered in International Union v. Wisconsin Employment Relations Board, *supra*, and decision therein was adverse to appellees' contention herein. In reaching a like conclusion we are content to rest decision on the holding of the Wisconsin court, incident to which it was said:

"But if the contention of the respondents on the ground now under consideration is upheld, then every order of the board based on violation of unfair labor practices of employees (and we might add every pertinent act of the legislature) may be ignored and there will be nothing left that the board can effectively do, as some products of every manufacturer inevitably reach interstate commerce."

To hold otherwise than in the cited case in practical effect would be to say that in this type of case the commerce clause of the United States Constitution largely, if not wholly, nullifies the inherent rights of states to exercise police power. We are not prepared to so hold. In this connection it may be noted that appellees call attention to the fact that some employees of the Chrysler Corporation who would be classed in the same bargaining unit are employed by the corporation in Indiana and some in Cali-

fornia. Even so, we are of the opinion that this circumstance cannot be held to be a restriction upon the exercise in Michigan of the state's inherent police power incident to a strike which is located in this state. Otherwise diversity of state location of employees would limit the right of any of the states, wherein the employees were located, in the exercise of inherent police power in the particular case with which we are here concerned. We know of no authority sustaining such conclusion and consider it not tenable.

"Under our constitutional system, there necessarily remains to the states, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. *Minnesota Rate Cases*, 230 U. S. 352, 402. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. * * * Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced." Kelly v. Washington, *supra*.

Incident to appellees' challenge of the validity of the statutory provision here involved, we find no merit in their contention that: "It is equally obvious that the statute is not saved by the delegation of authority to a majority of the bargaining unit. The character of the right (to strike) under discussion pertains to each individual." The right of an individual to terminate his employment is expressly preserved to the employee by the portion of section 13a of the Bonine-Tripp act, which reads:

"Nothing in this act shall be construed to require an employee to continue rendering labor or service without his consent or to make illegal the quitting of his employment."

In granting the injunctive relief prayed in the instant case the circuit judge was in error. The decree entered in the circuit court is reversed and a decree dismissing the bill of complaint may be entered in this Court. Since the

constitutionality of the statute and an important question are here involved, no costs are awarded.

Signed WALTER H. NORTH,
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JOHN R. DETHMERS,
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